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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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JAMES ISHMAEL TIBBS.

Plaintiff,

*versus*

LARRY GIST, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:07-CV-660

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff James Ishmael Tibbs, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The court previously referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending this lawsuit be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. The plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

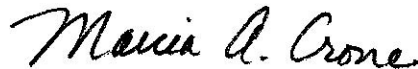
The magistrate judge's recommendation was based upon his conclusion that as the plaintiff had previously had at least four lawsuits or appeals dismissed as frivolous and did not allege he was in imminent danger of serious physical harm on the date he filed his complaint, 28 U.S.C. § 1915(g) prevented him from proceeding with this lawsuit on an *in forma pauperis* basis. In his objections, the plaintiff does not contest the fact that he previously had at least four lawsuits or

appeals dismissed as frivolous. Nor does he assert he was in imminent danger of physical harm on the date he filed his complaint. As a result, the plaintiff may not proceed with this lawsuit on an *in forma pauperis* basis and his objections are without merit.

**ORDER**

Accordingly, the plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this lawsuit.

SIGNED at Beaumont, Texas, this 2nd day of November, 2007.

A handwritten signature in cursive script, reading "Marcia A. Crone".

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE